



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND
WATERSHEDS

March 24, 2015

Mr. Don Smith

(b) (6)

Re: NPDES Individual Permit Application for Suction Dredge Mining in Idaho

Dear Mr. Smith:

Thank you for your March 13, 2015 email requesting information about how to apply for an Individual National Pollutant Discharge Elimination System (NPDES) Permit to suction dredge for one mile along the bed of the Salmon River near Riggins, Idaho. Specifically, you requested copies of the application forms pertinent to your proposal.

The Individual NPDES Permit application forms relevant to suction dredge mining in Idaho are Application Form 1 and Form 2D; copies of both forms are enclosed and available online at:

- Application Form 1: http://www.epa.gov/npdes/pubs/form_1.pdf.
This web link directs you to a 15-page PDF containing the required Form 1 at the end. Line-by-line instructions are provided in this packet, along with a glossary, as well as a list of supplemental forms that must be submitted (see, in particular, Form 2D). **Note: You will need to mark "yes" under Item II-D on Application Form 1.*
- Application Form 2D: <http://www.epa.gov/npdes/pubs/3510-2D.pdf>.
This web link directs you to an 18-page PDF containing the required Form 2D at the end. Line-by-line instructions are provided that rely on the same glossary provided with Application Form 1. **Note: In the case of suction dredging, the pollutants are rock and sand, and the outfall is the dredge.*

Please mail both forms to: EPA Region 10
NPDES Permits Unit OWW-130
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

An Individual NPDES Permit is required when a proposal does not fit the terms and conditions of an existing NPDES General Permit. General Permits are designed to cover a similar category of activities across a specific geographic area, and are subject to the same terms and conditions. To qualify for coverage under the current General Permit for small suction dredge mining in Idaho, one's operation must: (1) have an intake nozzle size of 5 inches or less; (2) use an engine rated at 15 horsepower or less; and (3) be operated in EPA's "allowed" areas only. For more information, please visit: <http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/idsuction-gp>.

Based on our review of your Joint Application for Permits, provided in your email, you propose to operate either a single 8-inch or two 5-inch dredges in tandem. You also propose to dredge along the bed of the Salmon River, a waterbody that serves as critical habitat for spring/summer Chinook salmon, fall Chinook salmon, steelhead, and bull trout, species protected under the Endangered Species Act (ESA). Exceeding the limitation on equipment size and operating in waters¹ with ESA listed species and/or critical habitat makes your operation ineligible for coverage under the EPA's NPDES General Permit for small suction dredge mining in Idaho.

The EPA's NPDES Individual Permitting process is influenced by a number of factors including compliance with other applicable statutes and resulting coordination with other agencies. In this case, the proposal to operate in ESA critical habitat and required consultations will significantly lengthen the process (experience demonstrates the process can exceed a year or more). Other steps in the Individual NPDES Permit process (condensed for this letter) include:

1. EPA reviews the completeness of the application.
2. NPDES applications are assigned based on staff availability, current workload, and other permitting priorities.
3. EPA consults with the U.S. Fish and Wildlife Service and/or NOAA Fisheries for potential impacts to species protected under the Endangered Species Act (ESA Section 7), and Indian tribes if there is a direct effect on a tribe (Executive Order 13175).
4. EPA prepares/shares the Draft Fact Sheet (technical, legal basis for permit conditions) with the Idaho Department of Environmental Quality (IDEQ) for preparation of a draft Water Quality Certification (Clean Water Act (CWA) Section 401).
5. EPA announces a 30-day public comment period and opportunity to request a hearing.
6. After the public comment period, EPA prepares a Response to Comments document (time required to prepare this document depends on the number and complexity of comments received).
7. EPA prepares/transmits the Preliminary Final Permit to IDEQ for the final Water Quality Certification, and completes ESA/Tribal consultation. Often, consultation can result in additional conditions.
8. Upon receipt of IDEQ's final Water Quality Certification, EPA issues the Final Permit, which then becomes effective after 30 days (appeals must be filed during this same 30-day period).
9. Appealed permits do not go into effect. Appeals are handled by the Environmental Appeals Board (EAB). EAB decisions may then be appealed to the Ninth Circuit Court of Appeals.

We would like to clarify that the Joint Application for Permits is a convenient "3-in-1" application established for use in Idaho by the U.S. Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL). Each agency operates under different federal/state authorities and issues permits for different components of an activity. The Joint Application for Permit allows an individual to fill out a single application, which is then submitted by the applicant to each agency. If an activity is regulated by all three

¹ ESA consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries is required before the EPA can authorize suction dredging in critical habitat areas, or where threatened/endangered species are present. This time-intensive process involves preparing a Biological Assessment, detailing current habitat conditions and potential effects to threatened/endangered species and their habitat from suction dredging. Completion of this process does not necessarily guarantee that your full request will be approved; additional restrictions may apply.

agencies, each agency will issue their own permit. Authorization from one agency does not mean an activity is also approved, or regulated, by the other agencies. In your case, a stream alteration permit from IDWR, pursuant to Idaho Code § 42-3803 and IDAPA § 37.03.07, does not constitute authorization under Section 404 of the CWA, issued by the Corps.

The Corps regulates the discharge of dredged or fill material into waters of the United States under Section 404 of the CWA. The Corps also regulates structures and/or work in or affecting navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899. The EPA contacted and received confirmation that the Corps has not issued any permits for your proposal to date. For more information about the Corps' permitting authority in Idaho, please visit their website at:

<http://www.nwww.usace.army.mil/BusinessWithUs/RegulatoryDivision.aspx>.

Lastly, your Joint Application for Permits states that you operated a 5-inch suction dredge on the Salmon River between August 1, 2013 and August 28, 2013 in connection with your 2-year exploration location approved by IDL. The EPA's records indicate that you have been aware of the requirement to obtain an NPDES permit since at least March 2013. Please be advised that knowing violations of the CWA could subject the violator to civil and/or criminal fines (see 33 USC § 1319(c)).

We appreciate your interest in applying for an Individual NPDES Permit. If you have questions concerning the application forms for the Individual NPDES Permit, you may contact Cindi Godsey at (206) 553-1676 or godsey.cindi@epa.gov. If you have any additional questions concerning the EPA's General Permit for small suction dredge mining in Idaho, please don't hesitate to contact Tracy DeGering at (208) 378-5756 or degering.tracy@epa.gov.

Sincerely,



Michael Lidgard, Manager
NPDES Permits Unit

Enclosures

cc: U.S. Army Corps of Engineers, Walla Walla District (Kelly Urbanek)
U.S. Bureau of Land Management (Allan Young)
U.S. Fish and Wildlife Service (Russ Holder, Mark Robertson)
NOAA Fisheries (Dave Mabe)
U.S. Forest Service (Jeffery Foss)
Idaho Department of Environmental Quality (Stephen Berry)
Idaho Department of Lands (Tom Schultz, Andrew Smyth)
Idaho Department of Water Resources (Aaron Golart)
Idaho Office of the Attorney General (Steven Schuster)